SECOND DIVISION

[G.R. No. 203867. April 26, 2023]

PILIPINAS SHELL PETROLEUM CORPORATION, PETITIONER, VS. COMMISSIONER NAPOLEON MORALES, AS COMMISSIONER OF CUSTOMS, JUAN N. TAN, AS COLLECTOR OF CUSTOMS OF THE PORT OF BATANGAS, AND SIMPLICIO DOMINGO, RESPONDENTS.

D E C I S I O N

LEONEN, SAJ.:

In indirect contempt proceedings, there must be a clear and definite showing that the comments were made with the intent of maligning and attacking the dignity of the court.

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Pilipinas Shell Petroleum Corporation (Pilipinas Shell), praying for the reversal of the Decision[2] and Resolution[3] of the Court of Tax Appeals *En Banc* and that judgment be rendered declaring former Commissioner Napoleon Morales (Morales), Collector Juan Tan (Tan), and Collector Simplicio Domingo (Domingo) of the Bureau of Customs liable for indirect contempt under Rule 71, Sections 3(b) and (d) of the Rules of Court.

The Court of Tax Appeals *En Banc* affirmed the Decision[4] and Resolution[5] of the Court of Tax Appeals Third Division, which dismissed the Petition for Contempt filed by Pilipinas Shell against Morales, Tan, and Domingo.

Pilipinas Shell, a domestic corporation duly organized and existing under the laws of the Philippines,[6] and the Bureau of Customs were parties in a case with the Court of Tax Appeals docketed as CTA Case No. 8004.[7]

During the pendency of the case, Pilipinas Shell and the Office of the Solicitor General, as counsel of Bureau of Customs, entered into an agreement. They settled that the Bureau of Customs would not seize Pilipinas Shell's future importations until the final resolution of the case provided that Pilipinas Shell would post a surety bond for its alleged deficiency excise tax and value-added tax liability.[8]

On March 3, 2010, the Court of Tax Appeals First Division approved the agreement and enjoined the collection of the alleged deficiency excise taxes and valued-added tax of Pilipinas Shell.[9]

In connection to the CTA Case No. 8004, the Court of Tax Appeals First Division also issued a Resolution,[10] which provides in part:

> Likewise, during the pendency of the case, the parties and their respective counsels are advised to refrain from discussing the merits of the case in the media as it may be considered [contemptuous] by the Court.[11]

On April 8, 2010, a press conference[12] was held at the Revenue District Office of Makati City, where Morales, Tan, and Domingo, and other government officials were in attendance. Its speakers were the officials of the Bureau of Customs and the then Presidential Adviser on Revenue Enhancement Narciso Y. Santiago (Santiago).[13]

A press statement was also circulated during the event, which stated:

> "BUREAU OF CUSTOMS ASKS CTA JUSTICE TO INHIBIT IN SHELL CASE
>
> The Bureau of Customs (BOC) wants Presiding Justice Ernesto D. Acosta of the Court of Tax Appeals (CTA) to inhibit himself from the case involving the governments claim of P7.34 billion in unpaid taxes from Filipinas Shell Petroleum Corporation. The case is currently pending with the CTA.
>
> The Philippine government wants Shell to pay P7.34 billion in unpaid excise taxes and VAT for its unleaded gas importation from 2004 to 2009.
>
> Shell claimed it was exempt from paying excise taxes on its unleaded gas importations on the basis of a March 24, 2004 legal memorandum by former Bureau of Internal Revenue (BIR) Deputy Commissioner Jose Mario Buñag. Buñag's ruling was affirmed by former Commissioner of Internal Revenue Sixto Esquivias IV.
>
> The BOC argued that Buñag's memorandum was unauthorized and had no legal basis. It said that at the time of the memorandum, Shell was paying excise taxes on its importations of unleaded gasoline, thereby recognizing its own tax liability

under the law. According to BOC, Shell cannot escape its tax liability by relying on the illegal memorandum.

On the other hand, the Bureau of Internal Revenue (BIR) upheld the position of the BOC that Shell is liable for more than P7 billion in excise taxes and VAT on its unleaded gas importations from 2004 to 2009.

In a ruling by Commissioner of Internal Revenue Joel Tan-Torres. the BIR reversed with finality the earlier ruling of Deputy Commissioner Jose Mario C. Buñag.

Tan-Torres ruled that the exemption given to Shell from excise taxes on its unleaded gasoline importations "has no legal and factual basis."

"This is the final position of the Bureau of Internal Revenue on this matter," Tan-Torres held in his December 15, 2009 ruling.

The BIR found that "the true and correct taxes should have been collected had [Pilipinas Shell] truthfully declared in their Tax Invoices and Bills of Lading that they submitted to BOC that the shipments were Unleaded Gasoline (Catalytic Cracked Gasoline)."

Citing Supreme Court decisions, the BIR said that tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority.

The BIR ruled that Shell's importation of unleaded gasoline shall be subject to excise tax at the rate of 4.35 per liter.

Shell filed a case in the CTA to prevent the BOC from collecting the unpaid excise taxes. The BOC said that Acosta must inhibit himself from deciding the case because he never disclosed the fact that he worked as fiscal services assistant for Shell in 1975 to 1981.

The BOC said that judicial ethics mandate that a judge disclose his connections with a party to a case before him in order to place himself above reproach and suspicion.

The BOC, quoting the Code of Judicial Conduct, said that judges should disqualify

> themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially.
>
> Customs Commissioner Napoleon Morales also decried moves by certain quarters to prevent the government from collecting from Shell.
>
> There is reportedly black propaganda being waged in the media against government officials who are at the forefront of the government's collection against Shell.
>
> Presidential Adviser on Revenue Enhancement Narciso Y. Santiago Jr. also cried foul at the dirty tactics.
>
> "It is pathetic that there are certain Filipinos who, for money, will malign government officials who are merely performing their duties and functions in accordance with law. We are just trying to protect the revenues of the government. However, they are muddling the issue of Shell's liability to the government by attributing ill motives to government officials. Theirs are shameless attempts to defraud the government by using non-legal arguments," Santiago said.[14]

The matters discussed in the press conference and the press statement were published in various publications, such as *The Philippine Star, Business Mirror, The Manila Times, and the Philippine Daily Inquirer*.[15]

According to Pilipinas Shell, the conduct of the press conference and the distribution of the press statement were in direct violation of the Resolution of the Court of Tax Appeals enjoining the parties from discussing the merits of the case with the media. It pointed out that the speakers in the press conference disclosed "material information"[16] regarding the pending case. In particular, Domingo was quoted saying:

> Obligation to the Government is 7.3 Billion. What company or what surety company can held (sic) that asset or capital at least to pay that obligation just in case Shell lost? Nakikita n'yo ba yung point ko? No … no surety company has that asset 7.3 Billion. Sinasabi nila they want to go to the government insurance system, GSIS. We told them how you can do that?[17]

He also allegedly implied that Presiding Justice Ernesto D. Acosta (Justice Acosta) or the Court of Tax Appeals had a conflict of interest since he was a former employee of Pilipinas Shell:

> The Judge being a former employee of the Shell and now hearing the case or Shell to be resolved by him would mean a conflict [of] interest, a clear case of conflict interest that [is] why we are filing this. The Supreme Court it says here, he is the fiscal services assistant. Assistant tax counsel Shell Group Companies of the Philippines, Ermita Manila, October 1975 to March 1981.[18]

Morales was also quoted in asking Justice Acosta to inhibit from participating in CTA Case No. 8004 due to his prior employment with Pilipinas Shell:

> "Judicial ethics mandate that a judge disclose his connections with a party to a case before him in order to place himself above reproach and suspicion," Morales said.
>
> Citing the Code or Judicial Conduct, the Customs chief said Acosta should disqualify himself from taking part in the case.
>
> Acosta may be 'unable to decide the matter impartially or may appear to a reasonable observer that [he] is unable' to do, Morales said.[19]

Hence, Pilipinas Shell filed a Verified Petition for Contempt[20] against Morales, Domingo, and Tan. This petition was consolidated with CTA Case No. 8004 and was raffled to the Court of Tax Appeals Third Division.[21]

In their defense, the customs officials argued that the Resolution was not an absolute prohibition against making any statement regarding CTA Case No. 8004.[22] In any case, their participation in the press conference was in line with their duty to provide the public with information regarding matters of public concern.[23]

In its Decision,[24] the Court of Tax Appeals Third Division dismissed the Verified Petition for Contempt. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the instant Petition for Indirect Contempt is hereby DISMISSED for lack of merit. However, both parties are reminded to be more cautious in their dealings with the media in order for this Court to have fair and orderly disposition of the subject case, unhampered by extraneous influence that may tend to impair the impartiality of verdicts.
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> SO ORDERED.

The Court of Tax Appeals Third Division emphasized that the nature of indirect contempt proceedings is akin to a criminal case. Therefore, rules on criminal procedure shall similarly apply, including the burden of proof required—proof beyond reasonable doubt—to be presented by the complainant.[25]

According to the Court of Tax Appeals Third Division, Pilipinas Shell failed to prove that Morales, Domingo, and Tan had actual participation in the organization of the press conference and release of the press statement. It was also unable to establish that the discussion in the press conference and press statement were intended to malign the dignity of the Court of Tax Appeals.[26]

The Division also held that to be contemptuous, the act forbidden shall "clearly and exactly defined, so as to leave no reasonable doubt or uncertainty as to what specific act or things is forbidden or required."[27] It found that the Resolution was unclear on whether it was absolute or permissive. As such, it created doubt on the mind of the customs officials as to whether a prohibition actually existed.[28]

Pilipinas Shell filed a Motion for Reconsideration[29] before the Court of Tax Appeals *En Banc*.

In its Decision,[30] the Court of Tax Appeals *En Banc* affirmed the ruling of the Court of Tax Appeals Third Division. It agreed that Pilipinas Shell was unable to prove the criminal intent and the participation of Morales, Domingo, and Tan.[31] It also ruled that the statements pertaining to Justice Acosta were not contemptuous. "[T]here is no showing that respondents made such utterances to malign the [Court of Tax Appeals]."[32]

Pilipinas Shell filed a Motion for Reconsideration, which the Court of Tax Appeals *En Banc* denied in its Resolution.[33]

Hence, the present Petition.[34]

Petitioner asks this Court to set aside the rulings of the Court of Tax Appeals *En Banc* and declare respondents liable for indirect contempt. It asserts that the Resolution of the Court of Tax Appeals was an express prohibition, enjoining the parties from discussing the matters of CTA Case No. 8004 with the media.[35]

Petitioner adds that it presented adequate evidence to prove the individual participation of the respondents in the press conference and release of the press statement. Thus, respondents are in direct violation of the directive stated in the Resolution.[36]

Petitioner also claims that the statements made by respondents were contemptuous, especially those that seemed to imply that Justice Acosta would be impartial due to his previous employment with petitioner. These statements were allegedly done in "bad faith and solely for the purpose of influencing public sentiment instead of through proper legal proceedings."[37]

In their Comment,[38] respondents argue that the Resolution was merely an advisory. They rely on the use of the term "advise," which is permissive in nature and does not contemplate an express prohibition to the parties.[39] They claim that the matters discussed in the press conference, specifically those in relation to Justice Acosta, were not within the ambit of the Resolution as these do not relate to the "merits of the case."[40] They add that the motion for inhibition they intend to file was only an ancillary remedy independent from the issues in CTA Case No. 8004.[41]

In any case, they explain that the statements made were not contemptuous and petitioner failed to prove beyond reasonable doubt their participation and the presence of a malicious intent on their part. They add that the statements of Santiago should not be taken against them as he was not associated with the Bureau of Customs.[42]

In its Reply,[43] petitioner insists that the Resolution provided a clear and explicit prohibition to the parties not to discuss the merits of the case with the media. It points out that had it been merely advisory, the Court of Tax Appeals First Division would not have warned the parties of contempt should they violate the directive.[44]

Petitioner also claims it presented more than sufficient proof to show the active participation of respondents in the press conference. It adds that as the release of the press statement was simultaneous with the conduct of the press conference, respondents cannot say that they had no knowledge about it.[45]

Finally, petitioner argues that the utterances by respondents were made in bad faith, "with the intent of placing the [Court of Tax Appeals] First Division at a defensive[.]"[46]

The issue before this Court is whether or not respondents Commissioner Napoleon Morales, Collector Juan Tan, and Collector Simplicio Domingo of the Bureau of Customs are liable for indirect contempt.

The Petition has no merit.

Though proceedings involved in indirect contempt are *sui generis*, this Court has previously resolved that indirect contempt should be akin to criminal proceedings.[47] Thus, the party claiming that the opposing party committed indirect contempt must prove beyond reasonable doubt the presence of a clear criminal intent to, among others, "impede, obstruct[,] or degrade the administration of justice."[48]

Petitioner was unable to discharge this burden. It failed to convince this Court that respondents committed acts that constitute an attack on the dignity of the Court of Tax Appeals. Thus, respondents are not liable for indirect contempt.

Petitioner invokes Rule 71, Section 3 of the Rules of Court, which respondents allegedly violated:

> Section 3. Indirect contempt to be punished after charge and hearing. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty or any of the following acts may be punished for indirect contempt;
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> ....
>
> (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court [;]
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> ....
>
> (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice[.][49]

Before determining whether respondents are guilty of indirect contempt, a discussion on the nature of indirect contempt proceedings is proper.

Jurisprudence has explained in extent the concept of contempt:

> Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice[,] and dignity. *It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.* Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice party litigants or their witnesses during litigation. The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments. orders, and mandates of the court, and consequently, to the due administration of justice.[50] (Emphasis supplied)

The power to declare a party in contempt is extensive as it serves to protect the dignity of the courts and preserve the administration of justice.[51] Since this power is also discretionary, this Court has often reminded members of the judiciary to exercise care and restraint in punishing contempt and to use it "judiciously and sparingly"[52] and when only the party demonstrates "clear and contumacious refusal to obey"[53] the orders of the court. This power shall not be used as a retaliatory tactic and must be exercised on the "preservative and not on the vindictive principle."[54]

To further guide judges and justices in their exercise of contempt powers, this Court has delved into the difference between criminal and civil contempt and their purposes. In *Lorenzo Shipping Corporation v. Distribution Management of the Philippines*:[55]

> Proceedings for contempt are sui generis, in nature criminal, but may be resorted to in civil as well as criminal actions, and independently of any action. They are or two classes, the criminal or punitive, and the civil or remedial. A criminal contempt consists in conduct that is directed against the authority and dignity of a court or of a judge acting judicially, as in unlawfully assailing or discrediting

> the authority and dignity of the court or judge, or in doing a duly forbidden act. A civil contempt consists in the failure to do something ordered to be done by a court or judge in a civil case for the benefit of the opposing party therein. It is at times difficult to determine whether the proceedings are civil or criminal. In general, the character of the contempt of whether it is criminal or civil is determined by the nature of the contempt involved, regardless of the cause in which the contempt arose, and by the relief sought or dominant purpose. The proceedings are to be regarded as criminal when the purpose is primarily punishment, and civil when the purpose is primarily compensatory or remedial. *Where the dominant purpose is to enforce compliance with an order of a court for the benefit of a party in whose favor the order runs, the contempt is civil; where the dominant purpose is to vindicate the dignity and authority of the court, and to protect the interests of the general public, the contempt is criminal.* Indeed, the criminal proceedings vindicate the dignity of the courts, but the civil proceedings protect, preserve, and enforce the rights of private parties and compel obedience to orders, judgments and decrees made to enforce such rights.[56] (Emphasis supplied, citations omitted).

Since the power to punish contempt must be exercised with care, it is important to first determine the type of contempt proceedings involved and the quantum of proof that the party urging the court to declare another party in contempt must overcome.

Here, petitioner filed a case for indirect contempt against respondents for allegedly disobeying a lawful order and uttering statements that attack the Court or Tax Appeals. It argued that these acts are a form of disrespect toward the court. Following the characterization in *Lorenzo Shipping Corporation*, the contempt proceedings they sought for is criminal in nature.

This Court has previously ruled that the principles and rules in criminal actions should apply similarly to proceedings involved in criminal contempt.[57] As such, there must be proof beyond reasonable doubt that a party has committed acts that intend to undermine the administration of justice and dignity of the courts.

A party claiming that the opposing party disobeyed a lawful order of the court amounting to indirect contempt must first demonstrate the existence of an express order where the "act which is forbidden . . . to be done is clearly and exactly defined, so that there can be no

reasonable doubt or uncertainty as to what specific act or thing is forbidden or required."[58]

Petitioner argues that the Resolution of the Court of Tax Appeals First Division was a clear and express prohibition addressed to the parties to avoid discussing the merits of the CTA Case No. 8004 with the media. It asserts that by participating in the conduct of the press conference and release of the press statement, respondents blatantly violated the directive and must be held liable for indirect contempt under Rule 71, Section 3(b) of the Rules of Court for disobedience of or resistance to a lawful order.

We do not agree.

Petitioner failed to prove beyond reasonable doubt that there was disobedience on the part of the respondents.

In particular, petitioner failed to identify the definitive act allegedly forbidden in the Resolution of Court of Tax Appeals First Division. To recall, the wording of the pertinent portion of the Resolution states:

> Likewise, during the pendency of the case, the parties and their respective counsels are advised to refrain from discussing the merits of the case in the media as it may be considered [contemptuous] by the Court.[59]

We agree with the findings of the Court of Tax Appeals *En Banc* that there was no clear act prohibited in the Resolution.

In *Grego v. Commission on Elections*,[60] this Court has described that the use of the word "may" indicates that an order is generally permissive and directory in nature. Thus, the use of the words "advise" and "may" connotes that the Resolution was not an express command from the court that requires complete compliance from the parties.

The words "may" and "advise" appear in the wording of the Resolution. Contrary to petitioner's belief, the Resolution was merely an advisory, not a directive nor a lawful order. Petitioner failed to provide proof that there was an absolute prohibition for the parties to discuss with the media. Absent an explicit order, it can hardly be said that there was disobedience on the part of the respondents that can be considered contemptuous.

This Court reads the pertinent portion of the Resolution as a reiteration of the *sub judice*

rule.

The *sub judice* rule "restricts comments and disclosures pertaining to judicial proceedings[.]"[61] It is designed to ensure that the court will not be influenced by discussion of the issues made outside of the proceedings. It also avoids any extraneous influence in the decision-making of the courts.[62]

Sub judice is not explicitly mentioned in any Philippine statute or regulation. However, a violation of this rule is punishable under Rule 71, Section 3(d) of the Rules of Court, which declares in indirect contempt those who commit "any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice[.]"[63]

This Court has acknowledged that the *sub judice* rule can be perceived as a restriction on the right to freedom of speech and information. To ensure that both independence of the judiciary and freedom of speech are preserved, this Court has since laid down the test to determine if a comment made in relation to a pending judicial proceeding already violates the *sub judice* rule:

> Two theoretical formulas had been devised in the determination of conflicting rights of similar import in an attempt to draw the proper constitutional boundary between freedom of expression and independence of the judiciary. These are the "clear and present danger" rule and the "dangerous tendency" rule. *The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to be prevented.* And this evil is primarily the "disorderly and unfair administration of justice."
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> ....
>
> Thus, speaking of the extent and scope of the application of this rule, the Supreme Court of the United States said "Clear and present danger of substantive evils as a result of indiscriminate publications regarding judicial proceedings justifies an impairment of the constitutional right of freedom of speech and press only if the evils are extremely serious and the degree of imminence extremely high . . . *A public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely*

> *because it concerns a judicial proceeding still pending in the courts, upon the theory that in such a case it must necessarily tend to obstruct the orderly and fair administration of justice . . . The possibility of engendering disrespect for the judiciary as a result of the published criticism of a judge is not such a substantive evil as will justify impairment of the constitutional right of freedom of speech and press.*"
>
> No less important is the ruling on the power of the court to punish for contempt in relation to the freedom or speech and press. We quote; "Freedom of speech and press should not be impaired through the exercise of the power to punish for contempt of court unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice. . . A judge may not hold in contempt one who ventures to publish anything that tends to make him unpopular or to belittle. *The vehemence of the language used in newspaper publications concerning a judge's decision is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice.*"[64] (Emphasis supplied; citations omitted).

The application of the clear and present danger rule in cases involving *sub judice* was discussed in *Marantan v. Diokno*:[65]

> *The "clear and present danger" rule means that the evil consequence of the comment must be "extremely serious and the degree of imminence extremely high" before an utterance can be punished. There must exist a clear and present danger that the utterance will harm the administration of justice.* Freedom of speech should not be impaired through the exercise of the power or contempt of court unless there is no doubt that the utterances in question make a serious and imminent threat to the administration of justice. It must constitute an imminent, not merely a likely threat.[66] (Emphasis supplied; citations omitted)

The *sub judice* rule does not insulate the courts from fair and constructive criticism and comment from the public. The right of the public to express their sentiments on a case remains to be recognized.

However, the rule protects against unwarranted and personal attacks that would already impair the public's confidence in the courts.[67] Thus, the threat that the comments would "cause [an] unfair disposition of [the] pending case"[68] should also be readily apparent. Since proceedings involving indirect contempt are criminal in nature, there must also be a clear showing of malice and intent of the party to attack or malign the integrity of the court when they made their statements.[69]

In determining whether a statement violates the *sub judice* rule, we look into whom such statement is addressed to.

In *Mercado v. Security Bank Corporation*,[70] a letter addressed to a former chief justice of this Court was considered to be contemptuous. The letter was a plea by a losing party to the chief justice to reconsider the outcome of a case already resolved by this Court. It implied that the chief justice was pressured by the opposing party to decide in their favor.

In ruling that the letter was contemptuous, this Court stated that the party acted with bad faith and malice. The party made several insulting insinuations that this Court was bribed. The statement made in the letter "transgresses the permissible bounds of fair comment and criticisms bringing into disrepute, not only the authority and integrity of [the chief justice] and the *ponente*, but also of the entire judiciary."[71]

In re Macasaet,[72] this Court cited a journalist in contempt for authoring several articles regarding an alleged bribery incident in the Supreme Court. The articles described the members of this Court as "thieves" and "basket of rotten apples."[73] As a defense, the journalist invoked press freedom.

In its ruling, this Court acknowledged the role of the press in strengthening the accountability of the courts to the public. However, it held that disrespectful comments in the guise of press freedom shall not go unpunished:

> Criticism at every level of government is certainly welcome. After all, it is an essential part of the checks and balances in our republican system or government. However, criticisms should not impede or obstruct an integral component of our republican institutions from discharging its constitutionally-mandated duties.
>
> ....

> *All told, illegitimate and uninformed criticisms against the courts and judges, those which cross the line and attempt to subvert the judicial process, must be avoided.* They do a great disservice to the Constitution. They seriously mislead the public as to the proper functioning of the judiciary. While all citizens have a right to scrutinize and criticize the judiciary, they have an ethical and societal obligation not to cross that too important line.[74] (Emphasis supplied).

In *Cabansag v. Fernandez*,[75] the party being accused of contempt wrote a letter to the Presidential Complaints and Action Commission regarding the delay in the disposition of their case before the trial court. This Court did not cite the party in contempt as their comments were addressed to the opposing party, and not to judge involved. There was also no "serious imminent threat" in the statements that would meet the clear and present danger rule.

Similarly, in *Marantan*, this Court ruled that the statements did not violate the *sub judice* rule. In that case, the aggrieved party and their counsel expressed their lament, through a press conference, regarding the delay in the resolution of their case. This Court did not view the statements as posing an impediment in the administration of justice:

> As to the conduct of the Court, a review of the respondents' comments reveals that they were simply stating that it had not yet resolved their petition. There was no complaint, express or implied, that an inordinate amount of time had passed since the petition was filed without any action from the Court. There appears no attack or insult on the dignity of the Court either.
>
> "A public utterance or publication is not to be denied the constitutional protection or freedom of speech and press merely because it concerns a judicial proceeding still pending in the courts, upon the theory that in such a case, it must necessarily tend to obstruct the orderly and fair administration of justice[.]"
>
> Freedom of public comment should, in borderline instances, weigh heavily against a possible tendency to influence pending cases. The power to punish for contempt, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice. In the present case, such necessity is wanting.[76]

Since the imposition of punishment of indirect contempt is considered as a remedy of "last resort,"[77] this Court has been strict in its implementation. It will not use the same absent clear showing that the statements were made to "impede, interfere with[,] and embarrass the administration of justice."[78]

Petitioner continues to argue that respondents expressed certain statements that not only violated the Resolution but were also made to influence the public sentiment regarding the issues being settled in CTA Case No. 8004. It insists that contrary to the findings of the Court of Tax Appeals *En Banc*, respondents each had a distinct participation during the press conference and were even quoted by various publication with their statements. It asserts that respondents made such statements in bad faith and with the purpose of swaying the public sentiment.

In particular, respondent Domingo was quoted stating that:

> Obligation to the Government is 7.3 Billion. What company or what surety company can held (sic) that asset or capital at least to pay that obligation just in case Shell lost? Nakikita n'yo ba yung point ko? No . . . no surety company has that asset 7.3 Billion. Sinasabi nila they want to go to government insurance system, GSIS. We told them how can you do that?[79] (Emphasis removed)

Petitioner is mistaken. They were unable to prove beyond reasonable doubt that respondents made such statements with the intention to "impede, interfere with[,] and embarrass the administration of justice."[80]

The application of the clear and present danger test requires the examination of whether the utterance will "harm the administration of justice"[81] and if the statements made pose a threat where the consequences are "extremely serious and the degree of imminence extremely high."[82]

This Court agrees with the Court of Tax Appeals *En Banc* that the utterances made by respondents on matters of CTA Case No. 8004 cannot be considered contemptuous.

Petitioner failed to demonstrate how the statements will meet the requirements imposed by the clear and present danger test.

These statements were made after the Court of Tax Appeals First Division already allowed

the posting of the bond by petitioner in the collection case.[83] Regardless of any action from either party, the Division has already acted upon the issue on the posting of the bond. There was no more threat that the court would have been influenced in ruling on the posting of the bond.

Still, petitioner insists that respondents made such statements with the purpose of swaying public opinion.

We hold that this is speculative. There was no evident proof that there was genuine intent on the part of respondents to malign the Court of Tax Appeals. Rather, the statements made were criticism in relation to the actions of petitioner, not an attack on the Court of Tax Appeals.

We adhere to our rulings in *Cabansag* and *Marantan*. It follows that the statements made in this case shall not be considered as amounting to indirect contempt.

Petitioner also claims that respondents made an issue regarding Justice Acosta's former employment with petitioner during the press conference. Respondent Domingo was even quoted saying:

> The Judge being a former employee of the Shell and now hearing the case of Shell to be resolved by him would mean a conflict [of] interest, a clear case of conflict interest that['s] why we are filing this. The Supreme Court it says here, he is the fiscal services assistant. Assistant tax counsel Shell Group Companies of the Philippines, Ermita Manila, October 1975 to March 1981.[84]

Respondent Morales was also quoted stating:

> "Judicial ethics mandate that a judge disclose his connections with a party to a case before him in order to place himself above reproach and suspicion," Morales said.
>
> Citing the Code of Judicial Conduct, the Customs chief said Acosta should disqualify himself from taking part in the case.
>
> Acosta may be 'unable to decide the matter impartially or may appear to a reasonable observer that [he] is unable' to do, Morales said.[85]

The press statement circulated during the press conference was captioned "Bureau of Customs Asks CTA Justice to Inhibit in Shell case" and discussed Justice Acosta's previous connection to petitioner:

> Shell filed a case in the CTA to prevent the BOC from collecting the unpaid excise taxes. The BOC said that Acosta must inhibit himself from deciding the case because he never disclosed the fact that he worked as fiscal services assistant for Shell in 1975 to 1981.
>
> The BOC said that judicial ethics mandate that a judge disclose his connections with a party to a case before him in order to place himself above reproach and suspicion.
>
> The BOC, quoting the Code of Judicial Conduct, said that judges should disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially.[86]

This Court agrees with the ruling of the Court of Tax Appeals *En Banc* that the statements were made only by respondents as an expression of "what they believed as a violation of the basic principle of judicial ethics and to show their intention to file a Motion for Inhibition before this Court."[87]

The intention behind making such statements is crucial in determining whether there is indirect contempt.

In *Mercado*, this Court required the showing of bad faith, which it defined as "a dishonest purpose or some moral obliquity and conscious doing of a wrong."[88] It added that the same "contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes."[89] It must be clearly proven by the claimant, petitioner in this case, and cannot be speculated upon.[90]

To reiterate, there must be sufficient proof beyond reasonable doubt that there was an intention "to impede, obstruct, or degrade the administration of justice"[91] for indirect contempt cases to prosper.

Petitioner failed to prove the existence of bad faith or ill motive on the part of respondents.

Using the clear and present danger test, there was no imminent threat posed by respondents' act of making such statements relating to Justice Acosta.

This Court believes that respondents were only making fair comments in discussing Justice Acosta's failure to mention his prior connection to petitioner while being the presiding justice in CTA Case No. 8004.

FOR THESE REASONS, the Petition is **DENIED**. The July 5, 2012 Decision and October 2, 2012 Resolution of the Court of Tax Appeals En Banc in CTA EB Case No. 851 are **AFFIRMED**.

SO ORDERED.

Lazaro-Javier, M. Lopez, J. Lopez, and *Kho, Jr., JJ.*, concur.

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[1] *Rollo*, pp. 27-84.

[2] *Id*. at 10-19. The July 5, 2012 Decision in CTA EB Case No. 851 was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas of the Court of Tax Appeals En Banc, Quezon City. Presiding Justice Ernesto D. Acosta inhibited.

[3] *Id*. at 21-24. The October 2, 2012 Decision in CTA EB Case No. 851 was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Erlinda P. Uy. Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla of the Court of Tax Appeals En Banc, Quezon City. Presiding Justice Ernesto D. Acosta inhibited. Associate Justice Amelia R. Cotangco-Manalastas was on leave.

[4] *Id*. at 194-206. The August 26, 2011 Decision in CTA Case No. 8121 was penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justice Olga Palanca-Enriquez of the Court of Tax Appeals Third Division, Quezon City. Associate Justice Lovell R. Bautista was on official business.

[5] *Id*. at 208-211. The December 2, 2011 Resolution in CTA Case No. 8121 was penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justice Lovell R. Bautista of the Court of Tax Appeals Third Division, Quezon City. Associate Justice

Olga Palanca-Enriquez was on leave.

[6] *Id.* at 11.

[7] *Id.* at 12, 32.

[8] *Id.* at 32.

[9] *Id.* at 33.

[10] *Id.* at 12.

[11] *Id.* This Court notes that a full copy of the March 12, 2010 Resolution of the Court of Tax Appeals Third Division was not included in the *rollo*. The pertinent text of the March 12, 2010 Resolution is lifted from the July 5, 2012 Decision of the Court of Tax Appeals En Banc.

[12] *Id.* at 34-40.

[13] *Id.*

[14] *Id.* at 342-344.

[15] *Id.* at 345-355.

[16] *Id.* at 12.

[17] *Id.* at 36.

[18] *Id.* at 37.

[19] *Id.* at 38.

[20] *Id.* at 270-302.

[21] *Id.* at 44.

[22] *Id.* at 202.

[23] *Id.* at 203.

[24] *Id.* at 194-207.

[25] *Id.* at 200-201.

[26] *Id.* at 205.

[27] *Id.* at 198-199.

[28] *Id.* at 203.

[29] *Id.* at 658-700.

[30] *Id.* at 10-19.

[31] *Id.* at 15.

[32] *Id.* at 17.

[33] *Id.* at 21-24.

[34] *Id.* at 27-84.

[35] *Id.* at 48-51.

[36] *Id.* at 47-82.

[37] *Id.* at 75.

[38] *Id.* at 747-770.

[39] *Id.* at 760.

[40] *Id.* at 761-763.

[41] *Id.* at 763.

[42] *Id.* at 767.

[43] *Id.* at 790-829.

[44] *Id.* at 795.

[45] *Id.* at 801-802.

[46] *Id.* at 797.

[47] **Lorenzo Shipping Corporation v. Distribution Management of the Philippines**, 672 Phil. 1 (2011) [J. Bersamin, First Division].

[48] RULES OF COURT, rule 71, sec. 3.

[49] RULES OF COURT, Rule 71, sec. 3.

[50] **Limbona v. Lee**, 537 Phil. 610, 618 (2006) [J. Ynares-Santiago, First Division].

[51] **De Guia v. Guerrero, Jr.**, 304 Phil. 790 (1994) [J. Padilla, Second Division].

[52] *Id.* at 796.

[53] *Id.*

[54] *Id.*

[55] 672 Phil. 1 (2011) [J. Bersamin, First Division].

[56] *Id.* at 14-15.

[57] **People v. Godoy**, 312 Phil. 977 (1995) [J. Regalado, *En Banc*].

[58] **Bank of the Philippine Islands v. Calanza**, 647 Phil. 507, 516 (2010) [J. Nachura, Second Division].

[59] *Id.* at 12.

[60] 340 Phil. 591 (1997) [J. Romero, *En Banc*].

[61] **Romero II v. Estrada**, 602 Phil. 312, 319 (2009) [J. Velasco, Jr., *En Banc*].

[62] *Id.* Also *see* **Marantan v. Diokno**, 726 Phil. 642 (2014) [J. Mendoza, Third Division].

[63] RULES OF COURT, rule 71, sec. 3(d).

[64] **Cabansag v. Fernandez**, 102 Phil. 152, 161-162 [J. Bautista Angelo, First Division].

[65] 726 Phil. 642 (2014) [J. Mendoza, Third Division].

[66] *Id.* at 649.

[67] **In re Macasaet**, 583 Phil. 391 (2008) [J. Reyes, R.T., En Banc].

[68] J. Carpio, Dissenting Opinion in **In re Macasaet**, 583 Phil. 391, 477 (2008) [J. Reyes, R.T., En Banc].

[69] **Marantan v. Diokno**, 726 Phil. 642 (2014) [J. Mendoza, Third Division].

[70] 517 Phil. 690 (2006) [J. Sandoval Gutierrez, En Banc].

[71] *Id.* at 701-702.

[72] 583 Phil. 391 (2008) [J. Reyes, R.T., En Banc].

[73] *Id.* at 451.

[74] *Id.* at 459.

[75] 102 Phil. 152 [J. Bautista Angelo, First Division].

[76] **Marantan v. Diokno**, 726 Phil. 642, 650 (2014) [J. Mendoza, Third Division].

[77] **People v. Godoy**, 312 Phil. 977, (1995) [J. Regalado, En Banc].

[78] RULES OF COURT, rule 71, sec. 3(d).

[79] *Rollo*, p. 36.

[80] RULES OF COURT, Rule 71, sec. 3(d).

[81] **Cabansag v. Fernandez**, 102 Phil. 152, 161 (1957) [J. Bautista Angelo, First Division].

[82] **Marantan v. Diokno**, 726 Phil. 642, 649 (2014) [J. Mendoza, Third Division].

[83] *Rollo*, p. 33.

[84] *Id.* at 37.

[85] *Id.* at 38.

[86] *Id.* at 343-344.

[87] *Id.* at 17.

[88] **Mercado v. Security Bank Corporation**, 517 Phil. 690, 701 (2006) [J. Snndoval Gutierrez, *En Banc*].

[89] *Id.*

[90] *Id.*

[91] RULES OF COURT, rule 71, sec. 3(d).

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